

LOST PINES GROUNDWATER CONSERVATION DISTRICT

**AN ORDER ON REHEARING GRANTING APPLICATIONS
OF FORESTAR (USA) REAL ESTATE GROUP, INC.
FOR OPERATING PERMITS AND TRANSPORT PERMITS**

WHEREAS, the Forestar (USA) Real Estate Group, Inc. (“Applicant”) submitted applications for Operating and Transport Permits for 10 wells in Lee County seeking authorization to withdraw an aggregate of 45,000 acre-feet per year from the Simsboro aquifer to be used for drinking water supply purposes in Bastrop, Hays, Lee, Travis and Williamson Counties (the “Applications”); and

WHEREAS, after proper notice under District Rule 14.3.C, the Board of Directors of the District (the “Board”) held a public hearing on the Applications at 7:00 p.m. on March 20, 2013, at the Bastrop City Hall in Bastrop, Texas; and

WHEREAS, the Board did not receive a request for a contested case hearing on the Applications before the March 20 public hearing; and

WHEREAS, the Board heard comments on the Applications at the March 20 public hearing; and

WHEREAS, Aqua Water Supply Corporation filed a request for a contested case hearing on the Applications on April 10, 2013; and

WHEREAS, the City of Giddings filed a request for a contested case hearing on the Applications on May 7, 2013; and

WHEREAS, Environmental Stewardship filed a request for a contested case hearing and/or a request for party status in any contested case hearing on the Applications on May 8, 2013, and Andrew Meyer, Bette Brown, Rhonda Brown Hosea, Phillip A. Brown, Darwyn Hanna, Frank D. Brown, Madeline Brown Stifflemire, and Walter Richard Brown filed requests for party status in any contested case hearing on the Applications on May 9, 2013;

WHEREAS, the Board held a hearing on May 15, 2013 to determine whether the requests for contested case hearings filed by Aqua Water Supply Corporation and others were timely filed under the District Rules; and

WHEREAS, the Board voted to deny the Aqua Water Supply Corporation’s and all other requests for contested case hearing on the ground that they were not timely filed under the District Rules; and

WHEREAS, the Board considered the Applications at its May 15, 2013 meeting and adopted an order granting the Applications, subject to special conditions set out in the Operating Permits and Transport Permits attached to its order; and

WHEREAS, the Operating Permits and Transport Permits approved in the Order were issued to the Applicant on July 18, 2013; and

WHEREAS, on June 3, 2013, Applicant requested written findings and conclusions regarding the Board's decision on the Applications; and

WHEREAS, on July 17, 2013, the Board approved an order adopting findings and conclusions on the Applications; and

WHEREAS, on August 6, 2013, Applicant filed a motion for rehearing of the Board's decision on the Applications; and

WHEREAS, on November 19, 2013, the Board granted Applicant's motion for rehearing; and


WHEREAS, a rehearing on the Applications was held on December 16, 2013, at which Applicant, the General Manager, and commenters presented exhibits and oral arguments to the Board; and

WHEREAS, the Board has considered the motion for rehearing and the evidence and arguments submitted at the rehearing;

NOW THEREFORE, the Board:

1. ADOPTS the attached Findings of Fact and Conclusions of Law on Rehearing; and
2. DENIES all requests to modify or amend the terms of the Operating Permits and Transport Permits issued on July 18, 2013.

ISSUED:



President, Lost Pines Groundwater
Conservation District Board of Directors

Date: 1-15-14

LOST PINES GROUNDWATER CONSERVATION DISTRICT

**FINDINGS OF FACT AND CONCLUSIONS OF LAW ON REHEARING
ON APPLICATIONS OF FORESTAR (USA) REAL ESTATE GROUP, INC.
FOR OPERATING PERMITS AND TRANSPORT PERMITS**

FINDINGS OF FACT

PROCEDURAL HISTORY

1. In December 2009, Sustainable Water Resources L.P. submitted applications to the District for 10 wells in Lee County seeking authorization to withdraw an aggregate of 45,000 acre-feet per year from the Simsboro aquifer to be used for drinking water supply purposes in Bastrop, Hays, Lee, Travis and Williamson Counties (the "Applications").
2. By letter dated August 13, 2012, Forestar (USA) Real Estate Group, Inc. ("Applicant") notified the District that it had purchased all of the assets of Sustainable Water Resources L.P., including the Applications.
3. On January 8, 2013, the General Manager sent a letter to Applicant notifying the Applicant that the District intended to treat the Applications as applications for Well Registration, Operating Permits, and Transport Permits under the District rules in effect as of January 1, 2013. The letter also requested additional information on the Applications.
4. On January 17, 2013, Applicant sent a letter to the General Manager agreeing to the treatment of the Applications as applications for Well Registration, Operating Permits, and Transport Permits under the District rules in effect as of January 1, 2013, and submitted the additional information requested in the General Manager's letter.
5. By letter dated February 20, 2013, the General Manager: (a) notified the Applicant that the Applications were Administratively Complete; and (b) provided the Applicant with the notice described in District Rule 14.3.C, setting the Applications for a public hearing on March 20, 2013.
6. By letter dated February 21, 2013, the General Manager provided the Applicant with a written summary of the General Manager's recommendation on the Applications to the Applicant, pursuant to District Rule 14.3.B(2).
7. On February 25, 2013, Applicant mailed the notice of public hearing as provided in District Rule 14.3.C(3)(a) and provided the District with proof of the mailing of notice on March 7, 2013.
8. On February 28, 2013, Applicant published the notice of public hearing in The Bastrop Advertiser, the Lexington Leader, and the Giddings Times and News and provided the District with proof of that publication on March 7, 2013.

9. The Board of Directors of the District (the "Board") held a public hearing on the Applications at 7:00 p.m. on March 20, 2013, at the Bastrop City Hall in Bastrop, Texas.
10. The agenda for the March 20 Board meeting provided for: "Consideration and possible action on applications of Forestar (USA) Real Estate Group, Inc. for Operating Permits and Transfer Permits for Well Nos. 1-10."
11. The Board did not receive a request for a contested case hearing on the Applications before the March 20 public hearing.
12. The Board heard comments on the Applications at the March 20 public hearing, then the President closed the public hearing.
13. On April 10, 2013, Aqua Water Supply Corporation filed a request for a contested case hearing on the Applications on April 10, 2013.
14. On May 7, 2013, the City of Giddings filed a request for a contested case hearing on the Applications.
15. On May 8, 2013, Environmental Stewardship filed a request for a contested case hearing and/or a request for party status in any contested case hearing on the Applications.
16. On May 9, 2013, Andrew Meyer, Bette Brown, Rhonda Brown Hosea, Phillip A. Brown, Darwyn Hanna, Frank D. Brown, Madeline Brown Stifflemire, and Walter Richard Brown filed requests for party status in any contested case hearing on the Applications.
17. On May 15, the City of Giddings withdrew its request for a contested case hearing on the Applications.
18. On May 15, 2013, the Board held a hearing to determine whether the requests for contested case hearings on the Applications filed by Aqua Water Supply Corporation and others were timely filed under the District Rules.
19. At the hearing on May 15, 2013, the Board voted to deny the Aqua Water Supply Corporation's and all other requests for contested case hearing on the ground that they were not timely filed under the District Rules.
20. At the hearing on May 15, 2013, the Board voted to adopt an order approving Operating Permits and Transport Permits for ten wells in Lee County authorizing Applicant to withdraw an aggregate of 12,000 acre-feet of water per year from the Simsboro aquifer to be used for drinking water supply purposes in Bastrop, Hays, Lee, Travis and Williamson Counties, in accordance with the terms and conditions of the Permits attached to the order (the "Order").
21. The Operating Permits and Transport Permits approved in the Order were issued on July 18, 2013.

22. On June 3, 2013, Forestar requested written findings and conclusions regarding the Board's decision on the Applications.

23. On July 17, 2013, the Board approved an order adopting findings and conclusions on the Applications.

24. On August 6, 2013, Applicant filed a motion for rehearing of the Board's decision on the Applications.

25. On November 19, 2013, the Board granted Applicant's motion for rehearing.

26. A rehearing on the Applications was held on December 16, 2013, at which Applicant, the General Manager, and commenters presented exhibits and oral arguments to the Board.

COMPLETENESS OF APPLICATION

27. The Applications included all of the information required by Texas Water Code section 36.113 and District Rules 4.2, 5.1, and 6.2.

DEDICATION TO BENEFICIAL USE

28. Applicant proposes to sell water for municipal purposes to customers located in Bastrop, Hays, Lee, Travis and Williamson Counties.

29. Regional water plans demonstrate the following needs for additional water for municipal purposes within those counties:

(a) The 2011 Region K and Region L plans indicate that Hays County will need approximately 35,600 acre-feet per year of additional municipal water supply in 2060.

(b) The 2011 Region G and Regional K Plans predict a 33,797 acre-feet per year municipal water shortage in Williamson County in 2030 and a 112,609 acre-feet per year shortage in 2060.

(c) The 2011 Region K plan predicts an 11,053 acre-feet per year municipal water shortage in Travis County in 2020, a 13,897 acre-feet per year shortage in 2030, a 16,964 acre-feet per year shortage in 2040, a 50,264 acre-feet per year shortage in 2050, and an 85,794 acre-feet per year shortage in 2060.

(d) The 2011 Region K plan predicts an approximately 2,392 acre-feet per year municipal water shortage in Bastrop County in 2020, an approximately 5,722 acre-feet per year shortage in 2030, an approximately 12,731 acre-feet per year shortage in 2040, an approximately 18,083 acre-feet per year shortage in 2050, and an approximately 25,288 acre-feet per year shortage in 2060.

(e) The 2011 Region G plan predicts a 480 acre-feet per year municipal water shortage in Lee County in 2030 and a 797 acre-feet per year shortage in 2060.

30. Applicant submitted a non-binding letter of intent dated August 1, 2011 for the negotiation and execution of a Wholesale Water Supply Contract on or before September 30, 2013, pursuant to which Applicant would deliver 25,000 to 45,000 acre-feet of water per year to Hays County.

31. Applicant submitted a non-binding letter of intent dated January 13, 2013 for the negotiation and execution of a Water Supply Contract on or before June 30, 2013, pursuant to which Applicant would supply 1,000 to 5,000 acre-feet of water per year to the Dripping Springs Water Supply Corporation in Hays County.

32. At the rehearing, Applicant submitted a Water Reservation and Supply Agreement Between Hays County and Forestar Real Estate Group, Inc. dated October 1, 2013 (the "Hays County Agreement") to the District, pursuant to which Forestar agrees to reserve 45,000 acre-feet of groundwater produced in Lee County for Hays County, and to deliver so much of that water as is permitted by the District to Hays County, during an initial term of five years (the "Initial Term"), with an option for Hays County to extend the term by an additional five years (the "Extended Term"). In addition, Hays County is granted the option to secure up to 45,000 acre-feet of groundwater permitted by the District for an initial term of at least 50 years, by providing written notice of the exercise of the option to Applicant during the Initial Term and any Extended Term.

33. The Hays County Agreement requires Hays County to seek an opinion of the Attorney General of the State of Texas regarding Hays County's authority to enter into and carry out the transactions contemplated in the agreement with the use of ad valorem tax revenues for payment of all costs arising under the agreement.

34. Hays County requested an opinion from the Attorney General by letter dated November 22, 2013.

35. The Hays County Agreement provides that, in the event the Attorney General fails to render an opinion within the first year of the agreement that confirms Hays County's authority to enter into and carry out the transactions contemplated in the agreement with the use of ad valorem tax revenues for payment of all costs arising under the agreement, then the Agreement shall be null and void.

36. The Attorney General has not yet issued an opinion in response to Hays County's November 22 request.

37. On rehearing, Applicant proposed that the Operating Permits authorize the following aggregate withdrawals between 2013 and 2039:

- (a) not more than 12,000 acre-feet per year from 2013 through 2023;

- (b) not more than 20,000 acre-feet per year from 2024 through 2028;
- (c) not more than 30,000 acre-feet per year from 2029 through 2033;
- (d) not more than 40,000 acre-feet per year 2034 through 2038; and
- (e) not more than 45,000 acre-feet beginning in 2039.

38. Special Condition (2) of the Operating Permit for each of the proposed wells provides:

Within 365 days from the date of issuance of the permit, Permittee shall submit to the District a binding contract to provide water in the full authorized annual withdrawal amount for the authorized purpose of use to one or more End Users in the authorized places of use. For purposes of this section, a “binding contract” means a contract that sets forth in detail the terms, provisions and conditions for the sale and purchase of water produced under this permit and that is binding and will continue in effect for so long as may be agreed to by the parties. If Permittee fails to submit a binding contract or contracts in the aggregated annual withdrawal amount of 12,000 acre-feet per year within 365 days from the date of issuance of this permit, then the aggregated annual withdrawal amount in this permit shall be automatically reduced to the amount for which Permittee has submitted a binding contract or contracts; and the General Manager is authorized to issue an amendment to this permit reflecting the reduced amount.

39. The Water Reservation and Supply Agreement Between Hays County and Forestar Real Estate Group, Inc. dated October 1, 2013 shall not be considered a binding contract for purposes of Special Condition (2) unless Permittee provides the District with an Attorney General’s opinion that confirms Hays County’s authority to enter into and carry out the transactions contemplated in the agreement with the use of ad valorem tax revenues for payment of all costs arising under the agreement within 365 days of the date of issuance of the Operating Permits.

40. Consistent with District Rules, the Operating Permits have a term of five years, and may be renewed for additional five-year terms with the approval of the Board.

41. It is reasonable for the Board to consider the amount of water that will be beneficially used during the term of the Operating Permit.

42. Applicant projects that no more than 12,000 acre-feet of water per year will be beneficially used during the initial term of the Operating Permits and the first five-year renewal term, if Applicant seeks to renew those Operating Permits.

CONSISTENCY WITH DISTRICT MANAGEMENT PLAN

43. The Operating Permits are consistent with the District Management Plan.

WATER CONSERVATION

44. The Applicant has submitted a water conservation plan that provides for conservation of water in the Applicant's operation of the wells and water transportation facilities.

45. Special Condition (3) of the Operating Permit provides:

At the time that Permittee submits a binding contract with an End User to the District, Permittee shall provide the District with the End User's water conservation plan and drought contingency plan, which must comply with the relevant provisions of the Texas Water Code and rules of the Texas Commission on Environmental Quality or successor agency.

46. Applicant did not submit Hays County's water conservation plan and drought conservation plan to the District at the time that Applicant submitted the Hays County Agreement to the District.

47. Applicant has not submitted any other potential End User's water conservation plan and drought contingency plan to the District.

48. Standard permit provision (2) provides: "Water withdrawn under the permit must be put to beneficial use at all times, and operation of the permitted well in a wasteful manner is prohibited."

WATER QUALITY

49. The Applicant has agreed to use reasonable diligence to protect groundwater quality.

WELL PLUGGING

50. The Applicant has agreed to follow the well plugging guidelines at the time of a well's closure.

LONG-TERM MANAGEMENT TO ACHIEVE DESIRED FUTURE CONDITION

51. Groundwater Management Area 12 has adopted and the Texas Water Development Board has approved the following Desired Future Condition ("DFC") for the Simsboro aquifer in the District: a District-wide average drawdown between January 2000 and December 2059 of 237 feet.

52. The District Management Plan adopts the following county DFCs for the Simsboro aquifer: (a) a Bastrop County-wide average drawdown between January 2000 and December 2059 of 145 feet; and (b) a Lee County-wide average drawdown between January 2000 and December 2059 of 345 feet.

53. The Central Queen City-Sparta Groundwater Availability Model (“GAM”) was developed by the Texas Water Development Board (“TWDB”) to estimate the regional impact of the withdrawal of groundwater from the Simsboro and other aquifers.

54. The GAM is the best tool available for estimating the regional drawdown of water levels in the Simsboro aquifer as a result of groundwater withdrawals within the District, although it has limitations.

55. Using the GAM, the TWDB executive administrator has determined that the Modeled Available Groundwater for the Simsboro aquifer is: 29,556 acre-feet per year in 2010, 32,731 acre-feet per year in 2020; 31,362 acre-feet per year in 2030; 34,916 acre-feet per year in 2040; 36,544 acre-feet per year in 2050; and 37,249 acre-feet per year in 2060.

56. The TWDB executive administrator’s estimates of the current and projected amount of groundwater produced under exemptions granted by District Rules and Texas Water Code section 36.117 for all aquifers in the District are: 11,666 acre-feet per year in 2010; 13,022 in 2020; 19,876 acre-feet per year in 2030; 20,423 acre-feet per year in 2040; 20,796 acre-feet per year in 2050; and 21,162 acre-feet per year in 2060.

57. The District authorized withdrawal of approximately 50,638 acre-feet of water per year from the Simsboro aquifer under permits issued before the Order was approved.

58. The District’s hydrologist ran the GAM with the assumption that 45,000 acre-feet per year would be withdrawn from Applicant’s 10 proposed wells from 2014 to 2060 and that no other groundwater would be withdrawn from the Simsboro aquifer.

59. The average Simsboro aquifer drawdown in feet in 2060 predicted by the model runs described in Finding No. 58 and the adopted DFCs are as follows:

	Bastrop County	Lee County	District-wide
45,000 afy only	44	201	118
Adopted DFC	145	345	237

60. The District’s hydrologist ran the GAM with the assumptions that withdrawals from existing wells completed in the Simsboro Aquifer will remain at 1999 levels, and that the following would be withdrawn from Applicant’s 10 proposed wells from 2014 to 2060: (a) 11,250 acre-feet per year; (b) 22,500 acre-feet per year; (c) 33,750 acre-feet per year; and (d) 45,000 acre-feet per year.

61. It is reasonable to use the 1999 actual pumping as a very conservative estimate of future withdrawals from the Simsboro aquifer by exempt and currently permitted wells.

62. The average Simsboro aquifer drawdown in feet in 2060 predicted by the model runs described in Finding No. 60 and the adopted DFCs are as follows:

	Bastrop County	Lee County	District-wide
11,250 afy + 1999 pumping	90	306	191
22,500 afy + 1999 pumping	101	356	221
33,750 afy + 1999 pumping	112	406	250
45,000 afy + 1999 pumping	123	457	280
Adopted DFC	145	345	237

63. The District's hydrologist ran the GAM with the assumptions that:

(a) withdrawals from existing non-exempt wells and exempt wells completed in the Simsboro aquifer will be as follows:

- (i) 20,298 acre-feet per year in 2010;
- (ii) 28,184 acre-feet per year in 2020;
- (iii) 31,240 acre-feet per year in 2030;
- (iv) 34,295 acre-feet per year in 2040;
- (v) 37,361 acre-feet per year in 2050;
- (vi) 40,406 acre-feet per year in 2060; and

(b) that the following would be withdrawn from Applicant's 10 proposed wells from 2014 to 2060:

- (i) 10,000 acre-feet per year;
- (ii) 20,000 acre-feet per year;
- (iii) 30,000 acre-feet per year;
- (iv) 40,000 acre-feet per year; and
- (v) 45,000 acre-feet per year.

64. The 2010 withdrawal of 20,298 acre-feet per year is a reasonable estimate, based on District records, of the amount of groundwater that was actually produced from the Simsboro aquifer in 2010 under existing District Operating Permits and under exemptions granted by District Rules and Texas Water Code section 36.117.

65. The 2020, 2030, 2040, 2050 and 2060 projected withdrawals are consistent with the withdrawals authorized under existing District Operating Permits and the 2012 State Water Plan Projected Net Water Demands within the District summary in the District Management Plan.

66. The 2020, 2030, 2040, 2050 and 2060 projected withdrawals are a reasonable estimate of the amount of groundwater that may actually be produced from the Simsboro aquifer under existing District Operating Permits and under exemptions from permitting granted by the District Rules and Texas Water Code section 36.117.

67. The average drawdown in feet in 2060 projected by the model runs described in Finding No. 63 and the adopted DFCs are as follows: